

critical technical items which, if disclosed, could jeopardize the obtaining of foreign or domestic patents. Trade secrets, salaries, or other information which could jeopardize commercial competitiveness should be similarly keyed and presented on a separate page. Proposals or reports which attempt to restrict dissemination of large amounts of information may be found unacceptable by USDA. Any other legend than that listed in paragraph (a)(11)(i) of this section may be unacceptable to USDA and may constitute grounds for return of the proposal without further consideration. Without assuming any liability for inadvertent disclosure, USDA will limit dissemination of such information to its employees and, where necessary for the evaluation of the proposal, to outside reviewers on a confidential basis.

(12) *Rights in data developed under SBIR funding agreement.* The SBIR legislation provides for “retention of rights in data generated in the performance of the contract by the small business concern.”

(i) The legislative history clarifies that the intent of the statute is to provide authority for the participating agency to protect technical data generated under the funding agreement, and to refrain from disclosing such data to competitors of the small business concern or from using the information to produce future technical procurement specifications that could harm the small business concern that discovered and developed the innovation until the small business concern has a reasonable chance to seek patent protection, if appropriate.

(ii) Therefore, except for program evaluation, participating agencies shall protect such technical data for a period of not less than 4 years from the completion of the project from which the data were generated unless the agencies obtain permission to disclose such data from the contractor or grantee. The government shall retain a royalty-free license for government use of any technical data delivered under an SBIR funding agreement whether patented or not.

(13) *Organizational management information.* Before the award of an SBIR funding agreement, USDA requires the

submission of certain organizational management, personnel and financial information to assure the responsibility of the proposer. This information is not required unless a project is recommended for funding, and then it is submitted on a one-time basis only. However, new information should be submitted if a small business concern has undergone significant changes in organization, personnel, finance, or policies including those relating to civil rights.

(b) [Reserved]

§ 3403.8 Proposal format for phase II applications.

(a) The following items relate to phase II applications. Further instructions or descriptions for these items as well as any additional items to be included will be identified in the annual solicitation, as necessary.

(1) *Proposal cover sheet.* Follow instructions found in § 3403.7(a)(1).

(2) *Project summary.* Follow instructions found in § 3403.7(a)(2).

(3) *Phase I results.* The proposal should contain an extensive section that lists the phase I objectives and makes detailed presentation of the phase I results. This section should establish the degree to which phase I objectives were met and feasibility of the proposed research project was established.

(4) *Proposal.* Since phase II is the principal research and development effort, proposals should be more comprehensive than those submitted under phase I. However, the outline contained in § 3403.7(a)(3) should be followed, tailoring the information requested to the phase II project.

(5) *Cost breakdown on proposal budget.* For phase II, a detailed budget is required for each year of requested support. In addition, a summary budget is required detailing the requested support for the overall project period.

(6) *Organizational management information.* Each phase II awardee will be asked to submit an updated statement of financial condition (such as the latest audit report, financial statements or balance sheet).

(7) *Follow-on funding commitment.* If the proposer has obtained a contingent commitment for phase III follow-on

funding, it should be forwarded with the phase II application.

(8) *Documentation of multiple phase II awards.* (i) An applicant that submits a proposal for a funding agreement for phase I and has received more than 15 phase II awards during the preceding 5 fiscal years, must document the extent to which it was able to secure phase III funding to develop concepts resulting from previous phase II awards. This documentation should include the name of the awarding agency, date of award, funding agreement number, topic or subtopic title, amount and date of phase II funding and commercialization status for each phase II award.

(ii) USDA shall collect and retain the information submitted under paragraph (a)(8)(i) of this section at least until the General Accounting Office submits the report required under section 106 of the Small Business Research and Development Enhancement Act of 1992.

(b) [Reserved]

§ 3403.9 Submission of proposals.

The program solicitation for phase I proposals and the letter requesting phase II proposals will provide the deadline date for submitting proposals, the number of copies to be submitted, and the address where proposals should be mailed or delivered.

Subpart D—Proposal Review and Evaluation

§ 3403.10 Proposal review.

(a) All research grant applications will be acknowledged.

(b) Phase I and phase II proposals will be judged competitively in a two-stage process, based primarily upon scientific or technical merit. First, each proposal will be screened by USDA scientists to ensure that it is responsive to stated requirements contained in the program solicitation. Proposals found to be responsive will be technically evaluated by peer scientists knowledgeable in the appropriate scientific field using the criteria identified in the annual solicitation, as appropriate. Proposals found to be non-responsive will be returned to the proposing firm without review.

(c) Both internal and external peer reviewers may be used during the technical evaluation stage of this process. Selections will be made from among recognized specialists who are uniquely qualified by training and experience in their respective fields to render expert advice on the merit of proposals received. It is anticipated that such experts will include those located in universities, Government, and non-profit research organizations. If possible, USDA intends that peer review groups shall be balanced with minority and female representation and with an equitable age distribution.

(d) Technical reviewers will base their conclusions and recommendations on information contained in the phase I or phase II proposal. It cannot be assumed that reviewers are acquainted with any experiments referred to within a proposal, with key individuals, or with the firm itself. Therefore, the proposal should be self-contained and written with the care and thoroughness accorded papers for publication.

(e) Final decisions will be made by USDA based upon the ratings assigned by reviewers and consideration of other factors, including the potential commercial application, possible duplication of other research, any critical USDA requirements, and budget limitation. In addition, the follow-on funding commitment will be a consideration for phase II proposals. In the event that two or more phase II proposals are of approximately equal technical merit, the follow-on funding commitment for continued development in phase III will be an important consideration. The value of the commitment will depend upon the degree of commitment made by non-Federal investors, with the maximum value resulting from a signed agreement with reasonable terms for an amount at least equal to the funding requested from USDA in phase II.

§ 3403.11 Availability of information.

Information regarding the peer review process will be made available to the extent permitted under the Freedom of Information Act (5 U.S.C. 552), the Privacy Act (5 U.S.C. 552a), the